

## Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

### Part 2—Individual Motions

#### 6.28 Motion to Suppress the Fruits of Illegal Police Conduct

Insert the following text after the February 2004 update to page 65:

The “independent source doctrine” may permit introduction of tainted evidence despite the exclusionary rule if the government can show that the same evidence was subject to discovery on the basis of information completely separate from information obtained unlawfully. *United States v Jenkins*, \_\_\_ F3d \_\_\_ (CA 6, 2005) (evidence was admissible because information contained in the affidavit was sufficient to show probable cause so that a valid warrant would have issued even without using information obtained in violation of a defendant’s Fourth Amendment rights).

A consensual encounter between an officer and a private citizen does not implicate the citizen’s constitutional right to be free from unreasonable searches and seizures. An initially consensual encounter may become a seizure when, based on the information obtained and observations made, an officer develops reasonable suspicion that the citizen has been involved in criminal activity. *People v Jenkins*, 472 Mich 26, 32–33 (2005). In addition, an investigatory stop may lead to an arrest based on other information gained and observations made. Evidence discovered as a result of a lawful arrest is properly seized at the time of the arrest. *Jenkins, supra* at 32–35.

## Part 2—Individual Motions

### 6.37 Motion to Suppress Evidence Seized Without a Search Warrant

#### 2. Searches Incident to Valid Arrest

Insert the following text after the November 2004 update to page 90:

A consensual encounter between an officer and a private citizen does not implicate the citizen's constitutional right to be free from unreasonable searches and seizures. An initially consensual encounter may become a seizure when, based on the information obtained and observations made, an officer develops reasonable suspicion that the citizen has been involved in criminal activity. *People v Jenkins*, 472 Mich 26, 32–35 (2005). In addition, an investigatory stop may lead to an arrest based on other information gained and observations made. Evidence discovered as a result of a lawful arrest is properly seized at the time of the arrest. *Jenkins*, *supra*.

In *Jenkins*, police were called to a housing complex in response to some complaints about a party there. When police arrived, they observed a small crowd of people drinking and talking loudly. Two police officers, Geoffrey Spickard and Jeff Lind, approached the defendant, who was seated on a stairwell away from the crowd of people. *Jenkins*, *supra* at 28.

After determining that the defendant did not live at the housing complex, Spickard asked the defendant for identification. The defendant provided Spickard with his state identification card and Spickard initiated a LEIN check on the defendant's name. Testimony at trial established that as soon as the LEIN check was initiated,

“[the] defendant's behavior suddenly changed. He became obviously nervous and made furtive gestures toward a large pocket on the side of his pants. He began to walk away, despite the fact that Officer Spickard still held his identification card and was speaking to him [footnotes omitted].” *Jenkins*, *supra* at 29.

The defendant continued walking away even as both officers followed the defendant and encouraged him to wait until the LEIN information was received. The defendant did not stop walking until Spickard put a hand on his shoulder and told the defendant he was not free to leave. The LEIN information showed an outstanding warrant for the defendant's arrest, and when he was being placed in handcuffs, a gun fell from the defendant's waistband. *Id.*

The defendant claimed the gun should be inadmissible because Officer Spickard seized him without the requisite reasonable suspicion and the discovery of the gun resulted from the unlawful seizure. The Michigan

Supreme Court disagreed and held that the gun was discovered in the course of effecting a lawful arrest. Specifically, the Court noted that the defendant's and Officer Spickard's initial encounter was consensual. That status changed when, under the totality of circumstances, the encounter escalated to an investigatory stop based on reasonable suspicion that the defendant was involved in criminal activity. The totality of circumstances included the change in the defendant's mood and manner, his nervousness, his willingness to walk away from the officers without his identification card even though the officers requested that he stay until the LEIN check was complete. *Jenkins, supra* at 33–35.

Because the investigatory stop was based on reasonable suspicion and the officers properly arrested the defendant when the LEIN check returned information on the outstanding warrant, the evidence discovered at the time of the arrest was wholly untainted by any police misconduct and therefore, the gun was admissible against the defendant. *Jenkins, supra* at 27–28.

## Part 2—Individual Motions

### 6.37 Motion to Suppress Evidence Seized Without a Search Warrant

#### 3. Seizure of Items in Plain View

Insert the following text after the March 2004 update to page 91:

See also *United States v Bruce*, \_\_\_ F3d \_\_\_ (CA 6, 2005) (police officers did not exceed the scope of the search warrant authorizing them to search a hotel room for papers showing ownership or control over illegal narcotics when the officers discovered relevant documents in an envelope in a garment bag; officers were authorized to look in any place where the papers named in the warrant might be found).